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CONTEMPORARY FORMS OF SLAVERY

Systematic rape, sexual slavery and slavery-like practices during armed conflict

Update to the final report submitted by Ms. Gay J. McDougall, Special Rapporteur

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Introduction

1. At its forty-ninth session, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in its decision 1997/114, decided to entrust Ms. Gay J. McDougall with the task of completing the study on systematic rape, sexual slavery and slavery-like practices during periods of armed conflict, including internal armed conflict. The final report (E/CN.4/Sub.2/1998/13) (hereinafter "final report") was submitted to the Sub-Commission at its fiftieth session.

2. The final report concludes that systematic rape, sexual slavery and slavery-like practices during armed conflict constitute violations of human rights, humanitarian and international criminal law, and as such must be properly documented, the perpetrators brought to justice, and the victims provided with full criminal and civil redress, including compensation where appropriate. The final report also concludes that even in the absence of armed conflict, sexual slavery and other forms of sexual violence, including rape, may be prosecuted under existing legal norms as slavery, crimes against humanity, genocide or torture.

3. The Sub-Commission, in its resolution 1998/18, welcoming with great interest the final report of the Special Rapporteur, endorsed "the accepted view that regardless of whether sexual violence in armed conflict occurs on an apparently sporadic basis or as part of a comprehensive plan to attack and terrorize a targeted population, all acts of sexual violence, in particular during armed conflicts and including all acts of rape and sexual slavery, must be condemned and prosecuted" (para. 2). The Sub-Commission also strongly endorsed "the Special Rapporteur's call for national and international responses to the increasing occurrence during armed conflicts, including internal armed conflicts, of acts of sexual violence and sexual slavery" (para. 4).

4. At its fifty-fifth session, the Commission on Human Rights, in its decision 1999/105, approved the request of the Sub-Commission to extend the mandate of the Special Rapporteur for a further year, "in order to enable her to submit an update on developments with respect to her mandate at the fifty-first session of the Sub-Commission." As Special Rapporteur for systematic rape, sexual slavery and slavery-like practices during armed conflict, including internal armed conflict, the Special Rapporteur understands her mandate to encompass various forms of sexual violence committed in a range of conflict situations.

5. The importance of continuing the Special Rapporteur's mandate and the focus on the use of sexual violence as a weapon of war is abundantly clear, as evidenced by atrocities which have been and continue to be committed in conflicts around the world. Such abuses include the detention and rape of women and girls in their homes, in rape camps or in other facilities, and the abduction of women and girls for the purpose of forced labour and forced sexual activity. These and other practices involving the treatment of women and girls as chattel, which often includes sexual access, are forms of slavery and must be prosecuted as such. Although the Special Rapporteur places special emphasis on abuses committed against women and girls, there is no doubt that prohibitions of the crimes discussed in this report must be applied to men and boys, who also are victims of sexual violence.

6. This update to the final report[1] considers a number of developments and actions at the international and national levels to end the cycle of impunity for sexual violence committed

during armed conflict. These developments include the historic adoption of the Rome Statute of the International Criminal Court, the continuing progress of the International Criminal Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda, and efforts at the national level to end impunity for violations of international law, including sexual violence committed during armed conflict.

I. PURPOSE OF THE REPORT

7. Both the Special Rapporteur's final report and this update share the same purposes: first, to reiterate the call for an effective response to sexual violence committed during armed conflict; second, to emphasize that rape and other forms of sexual abuse are crimes of violence which, under certain circumstances, may constitute slavery, crimes against humanity, genocide, grave breaches of the Geneva Conventions, war crimes and torture; third, to reinforce the legal framework which already exists for the prosecution of these crimes, with a view to achieving a more consistent and gender-responsive application of human rights and humanitarian and international criminal law.

8. Many cases of sexual violence during armed conflict, including many of the factual scenarios presented in this report, are most appropriately characterized and prosecuted as slavery. Slavery should be understood as the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised,[2] including sexual access through rape or other forms of sexual abuse. Critical elements in the definition of slavery are limitations on autonomy and on the power to decide matters relating to one's sexual activity and bodily integrity. A claim of slavery does not require that a person be bought, sold or traded; physically abducted, held in detention, physically restrained or confined for any set or particular length of time; subjected to forced labour or forced sexual activity; or subjected to any physical or sexual violence — although these are indicia of slavery.[3] Further, a claim of slavery does not require any State action or nexus to armed conflict. And the mere ability to extricate oneself at substantial risk of personal harm from a condition of slavery does not in and of itself nullify a claim of slavery.

9. The term "sexual" is used in this report as an adjective to describe a form of slavery. In all respects and in all circumstances, sexual slavery is slavery and its prohibition is a jus cogens norm. The legal effect of jus cogens is that slavery, as well as crimes against humanity, genocide and torture, are prohibited at all times and in all places. The violation of a jus cogens norm is subject to universal jurisdiction and can be prosecuted by any State. In fact, States have an obligation to ensure that persons who commit violations of jus cogens norms are brought to justice.[4]

II. SEXUAL VIOLENCE DURING CONTEMPORARY ARMED CONFLICTS

10. Sexual violence continues to be used as a weapon of war, as evidenced in armed conflicts around the world during the period covered by this report. For example, there are reports of sexual slavery and other forms of sexual violence, including rape, being used by all sides to the conflicts in Afghanistan,[5] Burundi,[6] Colombia,[7] the Democratic Republic of the Congo,[8] Liberia,[9] and Myanmar.[10]

11. The Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, has investigated the issue of sexual violence in Indonesia and reports the following:

> Before May 1998, rape was used as an instrument of torture and intimidation by certain elements of the Indonesian army in Aceh, Irian Jaya and East Timor. Since May 1998, the policy appears to be different. The Army Commander of East Timor assured us that rape by soldiers will not be tolerated and that perpetrators will be prosecuted. Nevertheless, the rapes continue.[11]

12. Also in Indonesia, during the 1998 riots which followed student protests and clashes with security forces in Jakarta, there were reports of widespread and systematic rapes of ethnic Chinese women and girls.[12] While there was some controversy over the number of rapes and the level of systematic planning involved in their commission,[13] the fact-finding team eventually established by the Government of Indonesia verified that there were at least 66 rapes.[14]

13. In Uganda, the Lord's Resistance Army (LRA) and the Allied Democratic Forces continued their practice of abducting children and using them as forced labourers, child soldiers and sexual slaves. It is estimated that the LRA, supported by and operating out of the Sudan, has abducted up to 10,000 children, with girls as young as 12 given to commanders as "wives". "Each soldier may have several such wives, and many of the children have become pregnant and have contracted sexual diseases."[15] The repeated rape and sexual abuse of women and girls under the guise of "marriage" constitutes slavery, as the victims do not have the freedom to leave, to refuse the sham "marriage" or to decide whether and on what terms to engage in sexual activity.[16]

14. There are widespread reports that Serb soldiers committed rapes and other acts of sexual violence against ethnic Albanian women and girls during the armed conflict in Kosovo. The allegations of sexual violence on the part of the Serbs include gang rape, rape in front of family and community members, and rape of women and girls detained in army camps, hotels and other locations.[17] The detention or confinement of women and girls in their homes or in other locations for the purpose of rape or other sexual abuse constitutes slavery and should be prosecuted as such.

15. The reports from Kosovo highlight the devastating psychological and social consequences, in addition to the physical trauma, that women survivors of sexual violence must endure. Many ethnic Albanian women who have been victims of sexual violence dare not speak about their experience, for fear of being ostracized in their families and communities due to the social stigma associated with rape. The cultural milieu for many women in Kosovo, and elsewhere, is one in which a husband will divorce his wife upon learning or even suspecting that she has been raped, and an unmarried woman who has been raped has few if any opportunities for marriage.[18] Women also are ostracized by other victims of sexual violence simply for reporting the crime.[19] Consequently, many women will admit to being threatened with or witnessing rape or other sexual abuse, but not to being victims themselves.

16. In June 1999, the Special Rapporteur participated in a two-day mission to Sierra Leone at the invitation of the United Nations High Commissioner for Human Rights. During the mission,

a number of teenage girls were interviewed, several of whom had been subjected to sexual violence and one of whom had been abducted and held by rebel soldiers for nearly three months, during which time she was repeatedly raped and sexually abused. These and numerous other testimonies reveal that sexual slavery and other forms of sexual violence, including gang rapes, public rapes and sexual mutilations, were systematic and widespread during the armed conflict, with rebel soldiers committing the vast majority of the reported abuses.[20]

17. In one well-documented incident in January 1999, a local rebel commander ordered all virgin girls to report for a physical examination. The girls were checked by a female companion of the commander and those who were "verified" as virgins, most of whom were between the ages of 12 and 15, were ordered to report each night for sexual abuse by the rebel fighters. Some of the girls were subsequently abducted when the rebels retreated. The acts committed in this incident constitute slavery, as the victims did not have the freedom to leave or to refuse to comply with the orders, and as repeated sexual access to the victims was gained through the use and threat of force, the control of the physical environment and abduction.

18. While a peace accord between the Government of Sierra Leone and the rebel forces was signed on 7 July 1999, the peace process suffered a grave setback in May 2000, demonstrating that it will require considerable time and effort for the people of Sierra Leone to surmount the devastating effects of the atrocities that were committed during the eight-year war. These atrocities include summary executions, murder, amputations of limbs and extremities, the use of child soldiers, and sexual violence.[21]

19. It also should be noted that while the peace accord offers amnesty to those persons who committed abuses during the war, such amnesty would pertain only to criminal prosecutions within the domestic jurisdiction of Sierra Leone, and only to acts preceding the effective date of the amnesty. Thus, crimes of sexual violence must be investigated and documented for possible criminal prosecution in the domestic courts of other States which may have jurisdiction, and for possible civil action in Sierra Leone. Once constituted, the Truth and Reconciliation Commission of Sierra Leone also should devote careful attention to documenting crimes of sexual violence committed during the conflict and should propose remedial actions to be taken by the Government of Sierra Leone, with support from the international community.

20. There are any number of often interconnecting reasons why sexual slavery and other forms of sexual violence, including rape, continue to be so prevalent in armed conflict situations. Some of the more obvious reasons include:

- The use of sexual violence is seen as an effective way to terrorize and demoralize members of the opposition, thereby forcing them to flee;

- Access to women's bodies and sexuality often is seen as the "spoils of war" or part of the "services" that are made available to combatants;

- Military or combat indoctrination often desensitizes combatants and dehumanizes the opposition, thereby facilitating the commission of atrocities during armed conflict, including sexual violence;

- In situations of armed conflict, where aggressive behaviour is particularly rewarded, individual combatants may be allowed or even encouraged to express their own pathology, brutality or personal animus through acts of sexual violence;

- Individual conscience and personal objections to sexual violence often are subordinated to mob rule or to superior orders in armed conflict situations;

- The generally violent and lawless climate created by armed conflict allows such crimes to be committed with impunity;

- Acts of sexual violence are not consistently viewed or codified as criminal acts, and those who commit them often are not punished under the law;

- Women and girls are devalued in society in general, making them vulnerable to sexual violence, particularly in times of armed conflict;

- Racism, xenophobia or ethnic hatred often is directed against women and girls who are members of targeted groups, and who then are subjected to sexual violence because of their gender and other factors of their identity;

- Sexual violence is used as a form of "ethnic cleansing" through forced impregnation, the prevention or termination of births, or the infliction of severe physical or mental suffering.

21. While these and other motives certainly merit consideration, with particular attention given to the ways in which they might be countered, the most immediate and effective deterrent to the use of sexual violence during armed conflict is to hold the perpetrators responsible for their crimes. As stated by the Commission on Human Rights, "the expectation of impunity for violations of international human rights or humanitarian law encourages such violations." The Commission further "urged States to give necessary attention to the question of impunity for violations of international human rights and humanitarian law, including those perpetrated against women, and to take appropriate measures to address this important issue."[22]

22. Out of all of the factual patterns described thus far in this report, only the egregious acts of sexual violence that have occurred in Kosovo are within the jurisdiction of an existing international criminal tribunal, the International Criminal Tribunal for the Former Yugoslavia. The permanent International Criminal Court will have jurisdiction only over those crimes which are committed after the Court is established. Thus, in the vast majority of cases of sexual violence occurring in contemporary armed conflicts, national judicial systems must be relied on to investigate, prosecute and punish the perpetrators.[23]

III. THE INTERNATIONAL CRIMINAL COURT

23. The adoption of the Rome Statute of the International Criminal Court[24] on 17 July 1998 was a critically important event in international law. The International Criminal Court (hereinafter "ICC"), will significantly supplement the international legal framework for prosecuting international crimes, including those involving sexual violence. In addition, a permanent international criminal court offers obvious advantages over ad hoc international tribunals in which jurisdiction is limited to offences occurring within a certain geographical area or within a prescribed period of time.

24. As at April 2000, 96 States had signed the Statute of the ICC and eight States had ratified it.[25] The statute requires 60 ratifications before it enters into force. The crimes over which the International Criminal Court will have jurisdiction are genocide, crimes against humanity, war crimes and the crime of aggression. Only crimes occurring after the Court is established will be subject to its jurisdiction.[26]

25. In the preamble to the Statute of the ICC, the United Nations Diplomatic Conference:

> [Affirmed] that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation;
>
> [Determined] to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes; [and]
>
> [Recalled] that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes.

26. In furtherance of this commitment to end impunity for international crimes, including sexual slavery and other forms of sexual violence, the Statute of the ICC explicitly includes gender concerns, gender-based crimes and sexual violence in many of its provisions. The term "gender" is defined in the Statute as "the two sexes, male and female, within the context of society."[27] The Special Rapporteur interprets this definition to be consistent with other, more clearly stated formulations, in which the term gender "refers to the socially constructed roles of women and men in public and private life."[28]

27. This report considers several aspects of the Statute of the ICC that represent the progressive development of international criminal law, particularly with respect to addressing gender-based crimes and sexual violence. However, in the diplomatic negotiations to delineate the elements of the crimes within the Court's jurisdiction, some States have attempted to limit the scope of the Court's protections. The Preparatory Commission for the ICC will hold its fifth session from 12 to 30 June 2000 at United Nations Headquarters. The elements of the crimes, as well as the rules of procedure and evidence for the Court, are to be finalized at that session. It is critical that the Statute of the ICC reinforces the highest possible human rights, humanitarian and international criminal law standards to ensure that international crimes involving gender-based or sexual violence are within the jurisdiction of the Court.

28. One example of the inclusion of gender-based crimes and sexual violence in the Statute of the ICC is with respect to crimes against humanity. Article 7 (1) (g) provides that constituent acts of crimes against humanity include "[r]ape, sexual slavery, enforced prostitution, forced pregnancy,[29] enforced sterilization or any other form of sexual violence of comparable gravity." Additionally, Article 7 (2) (c) of the Statute provides that enslavement, as a constituent act of crimes against humanity, includes "trafficking in persons, in particular women and children."

29. As of the writing of this report, the diplomatic negotiations over the elements of sexual slavery has resulted in the following proposed text: "... (3) the accused exercised a power attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such person or persons, or by imposing on them a similar deprivation of liberty; (4) the accused caused such person or persons to engage in one or more acts of a sexual nature."[30] It is unnecessary and inappropriate to require any element of commercial transaction for the crime of sexual slavery. Most contemporary forms of slavery, including sexual slavery, do not involve payment or exchange, and as stated in section I of this report, a claim of slavery does not require that a person be bought, sold or traded, or subjected to a similar deprivation of liberty.

30. Another negotiation proposal which threatens to diminish the scope and effectiveness of the prohibition on crimes against humanity in the Statute of the ICC was prompted by the efforts of some States to exclude crimes which are committed within the family. As of the writing of this report, the proposal would require proving that a State or organization actively promoted or encouraged the criminal conduct in question in order for it to constitute a crime against humanity. This would exclude from the jurisdiction of the Court those crimes which involve a State's failure to act, even in the face of widespread violations, such as widespread crimes committed against women.

31. It is particularly noteworthy that article 7 (1) (h), in stating that "[p]ersecution against any identifiable group or collectivity" may constitute a crime against humanity, includes gender among the grounds for persecution "that are universally recognized as impermissible under international law." This recognition of gender as an individual and collective identity which, like race, ethnicity and religion, is capable of being targeted for persecution, and thus merits specific protection under international law, is an explicit articulation of what has been an obvious omission in earlier codifications and formal definitions of crimes against humanity.

32. Another positive example of the inclusion of gender-based crimes and sexual violence in the Statute of the ICC is with respect to war crimes. Article 8 (2) (b) (xxii) provides that war crimes in international armed conflict include "[c]ommitting rape, sexual slavery, enforced prostitution, forced pregnancy ... enforced sterilizations, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions." Article 8(2)(e)(vi) provides that war crimes in non-international armed conflict include "[c]ommitting rape, sexual slavery, enforced prostitution, forced pregnancy ... enforced sterilizations, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions."[31]

33. The provision in the Statute of the ICC regarding genocide also is pertinent to gender-based violations, even though it does not explicitly refer to sexual violence. Article 6 (d),

which is reproduced from the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, provides that constituent acts of genocide include imposing measures intended to prevent births within a group.[32]

34. Sexual violence also is implicated in several other provisions of the Statute of the ICC, including: (i) torture as a crime against humanity[33] and a grave breach of the Geneva Conventions;[34] (ii) inhumane acts which cause serious injury as a crime against humanity[35] and a grave breach of the Geneva Conventions;[36] (iii) "outrages upon personal dignity, in particular humiliating and degrading treatment" as a serious violation of the laws and customs of war[37] and a serious violation of common article 3;[38] and (iv) violence to life and person, mutilation, cruel treatment and torture as serious violations of common article 3.[39]

35. In addition to its provisions regarding genocide, crimes against humanity and war crimes, the Statute of the ICC contains various other provisions which explicitly incorporate gender concerns. For instance, while falling short of requiring gender equality on the Court, article 36 (8) (a) (iii) provides for a "fair representation of female and male judges." The Statute also requires a consideration of the need for legal expertise on gender violence in the Court, the Office of the Prosecutor and the Victims and Witnesses Unit.[40]

36. Importantly, the Statute of the ICC also provides for the protection and rehabilitation of victims and witnesses, including "where the crime involves sexual or gender violence or violence against children."[41] This protection requires consideration of such matters as safety, physical and psychological well-being, dignity and privacy.[42] The Statute also provides for in camera proceedings and non-public hearings, particularly in cases involving sexual violence.[43]

37. The Statute of the ICC explicitly provides for the participation of non-governmental organizations, which are particularly useful sources for documenting and disseminating information on violence against women committed during armed conflict. Article 15 (2) provides that the Prosecutor may initiate an investigation on the basis of information from non-governmental organizations or other reliable sources, provided the Pre-Trial Chamber so authorizes. Article 44 (4) states that the Court and the Office of the Prosecutor may employ the expertise offered by non-governmental organizations.

38. Further, the Statute of the ICC provides for the reparation of victims and for the non-applicability of statutes of limitations. Article 75 states: "The Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation."[44] Article 29 of the Statute of the ICC states: "The crimes within the jurisdiction of the Court shall not be subject to any statute of limitations."[45] Both of these provisions are critical to ensuring full redress to victims of sexual violence committed during armed conflict.

39. In addition, the Statute of the ICC identifies several categories of individuals who may be held responsible for international crimes.[46] Article 25 provides for individual criminal responsibility for those persons who commit, attempt to commit, order, solicit, induce, aid, abet, assist or intentionally contribute to the commission of a crime within the Court's jurisdiction,[47] and for persons who incite others to commit genocide.[48] Article 27 stipulates that the statute applies to all persons without distinction, including on the basis of official capacity such as head

of State, member of Government or elected representative. And article 28 provides for the responsibility of military commanders and other superior authorities for crimes committed by subordinates under their control.

40. Modifying the principle applied in the Nürnberg Tribunal and in the ad hoc international criminal tribunals, that the defence of "superior orders" cannot be raised and may only be considered in mitigation of punishment, article 33 (1) of the Statute of the ICC provides that superior orders shall not relieve a person of criminal responsibility unless the subordinate was under a legal obligation to obey the order and did not know that the order was unlawful, and the order was not manifestly unlawful. Article 33 (2) does provide, however, that "orders to commit genocide or crimes against humanity are manifestly unlawful."

41. As for issues of admissibility, article 17 (1) of the Statute of the ICC provides that a case which has been or is being investigated or prosecuted by a State with jurisdiction is inadmissible, unless the State is unwilling or unable genuinely to conduct the proceedings. Under the Statute of the ICC, one indication of a State's "unwillingness" is lack of independence or impartiality in the national proceedings, which presumably would include gender bias.[49] The high threshold provided under the Statute for determining a State's "inability" to carry out proceedings is a "total or substantial collapse or unavailability of its national judicial system."[50]

42. It is the understanding of the Special Rapporteur that a crucial concern in evaluating the competence of national judicial systems to adjudicate international crimes is the extent to which the national system in question adequately protects the rights of women. In particular, the existence of gender biases in municipal laws or procedures must be taken into account when assessing the general competence of domestic courts to adjudicate the types of violations of human rights and humanitarian law addressed in this report that are directed against women.[51]

43. The provisions for the Court's jurisdiction are more limited than many at the Rome diplomatic conference had hoped they would be. Under the Statute of the ICC, the Court has jurisdiction in cases initiated by a State party or the Prosecutor only if the crime occurs on the territory of a State party (or a State which has accepted the Court's jurisdiction on an ad hoc basis) or if the accused is a national of a State party (or a State which has accepted the Court's jurisdiction on an ad hoc basis).[52] The Court also has jurisdiction in cases referred to it by the Security Council.[53] If none of the above provisions apply, the Statute excludes from the Court's jurisdiction those cases in which the victim is a national of a State party, as well as those cases in which the suspect is in the custody of a State party. Thus, for example, in an internal armed conflict where the State in which the crime occurs and of which the suspect is a national are the same, the Court could have jurisdiction only if that State is a party to the Statute, or has accepted the Court's jurisdiction on an ad hoc basis, or if the case is referred to the Court by the Security Council.

IV. THE AD HOC INTERNATIONAL CRIMINAL TRIBUNALS

44. In addition to the promising role that the International Criminal Court will play in the future, there have been several important developments in the ad hoc international criminal tribunals. Efforts continue in the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Tribunal for Rwanda (ICTR) to address violations committed

during the armed conflicts in those regions, including the investigation and prosecution of crimes involving sexual slavery and other forms of sexual violence. In addition to handling cases related to the conflict in Bosnia, the Office of the Prosecutor for the ICTY is investigating allegations of sexual violence committed during the conflict in Kosovo.

45. With the conclusion of several precedent-setting cases in both tribunals, jurisprudence is increasingly confirming that sexual slavery and other forms of sexual violence, including rape, committed during armed conflict are violations of international law. In the ICTY and the ICTR, acts of sexual violence, committed against women and men, have been charged and successfully prosecuted as crimes against humanity, genocide, grave breaches of the Geneva Conventions and other war crimes, including torture and outrages upon personal dignity. In addition to rape and sexual slavery, various other forms of sexual violence have been the basis of prosecution, including sexual mutilation, forced public nudity, and forcing victims to perform sexual acts on each other.

46. The definitions of rape used in the ICTY and the ICTR are consistent in recognizing that: (i) rape is a serious crime of violence; (ii) rape is not limited to forcible sexual intercourse; (iii) both women and men can be victims and perpetrators of rape; and (iv) coercion, as an element of rape, has a broad meaning which is not limited to physical force.[54]

47. The International Tribunal for Rwanda "considers sexual violence, which includes rape, as any act of a sexual nature which is committed upon a person under circumstances which are coercive."[55] The Special Rapporteur reiterates the definition of slavery as the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including sexual access through rape or other forms of sexual violence. Slavery, when combined with sexual violence, constitutes sexual slavery.

48. In the Kunarac, Kovac and Vukovic case pending before the International Criminal Tribunal for the Former Yugoslavia,[56] the Prosecutor alleges that one victim, who at the time was seven months pregnant, was detained for at least a week in Kunarac's headquarters.

> "During the entire period of her detention at this house, [the witness] was subjected to repeated rapes. In addition to being repeatedly raped, the witness was beaten. She also had to clean the house and obey each order given to her by the accused and his subordinates. [The witness] was treated as the personal property of Dragoljub Kunarac and his unit."[57]

49. Based on these allegations, Kunarac is charged with enslavement, rape and torture as crimes against humanity and with rape, torture and outrages upon personal dignity as war crimes. Kunarac also is charged with the aforementioned crimes for similar abuses committed against three other victims.[58] These allegations, if established at trial, constitute sexual slavery in the view of the Special Rapporteur. The treatment of the women as chattel or as personal property, which is the gravamen of slavery, is evidenced not only by the forced domestic work but also by the forced sexual activity. Indeed, the forced labour is a separate crime from the sexual slavery.

50. The Special Rapporteur understands that based on customary law interpretations of the crime of slavery, and thus sexual slavery, there are no requirements of any payment or exchange;

of any physical restraint, detention or confinement for any set or particular length of time; nor is there a requirement of legal disenfranchisement. Nonetheless, these and other factors may be taken into account in determining whether a "status or condition" of slavery exists. While the most commonly recognized form of slavery involves the coerced performance of physical labour or service of some kind, again, this is merely a factor to be considered in determining whether a "status or condition" exists which transforms an act, such as rape, into sexual slavery. It is the status or condition of being enslaved which differentiates sexual slavery from other crimes of sexual violence, such as rape. One respect in which slavery differs from imprisonment or arbitrary detention is that the limitations on autonomy can be solely psychological or situational, with no physical restraints.

51 Sexual slavery, as a form of slavery, is an international crime and a violation of jus cogens norms in the exact same manner as slavery.[59] Clearly, there can be no distinction which implies that slavery for the purpose of physical labour is a jus cogens crime, whereas slavery for the purpose of rape and sexual abuse is not.[60] As a jus cogens norm, the prohibition of slavery, including sexual slavery, cannot be the subject of derogation, amendment or any legal modification, except by a subsequent peremptory norm having the same character. As a jus cogens crime, neither a State nor its agents, including government and military officials, can consent to the enslavement of any person under any circumstances. Likewise, a person cannot, under any circumstances, consent to be enslaved or subjected to slavery. Thus, it follows that a person accused of slavery cannot raise consent of the victim as a defence.[61]

A International Criminal Tribunal for the Former Yugoslavia

52 As at April 2000, the ICTY had issued public indictments against 94 individuals, of whom 39 were in custody.[62] A major impetus for the establishment of the ICTY was sexual violence committed against women in the conflict in Bosnia, and this continues to be reflected in the cases brought before the Tribunal and in the indictments, at least half of which include allegations of sexual violence.[63] Three of the four cases completed by trial in the ICTY have involved allegations of sexual violence: the Tadić, Celebići and Furundžija cases.[64]

53 In the Furundžija case, the defendant, a Bosnian Croat paramilitary commander, was found guilty and sentenced to 10 years' imprisonment on two counts of war crimes - torture, and aiding and abetting in outrages upon personal dignity, including rape. The defendant was accused of conducting an interrogation of a Muslim woman prisoner while she was sexually assaulted by another soldier.[65] Although Furundžija did not commit the physical acts of sexual violence, his interrogation of the prisoner during the assaults made him criminally responsible as a co-perpetrator of torture. For his presence and his acts or omissions during the assault, Furundžija also was found liable for aiding and abetting in the rape of the prisoner. The prisoner was subsequently locked in a house where she was raped repeatedly by soldiers for two months. This crime, while not attributed to Furundžija, constitutes sexual slavery for which the perpetrators should be held liable.

54 The Trial Chamber entered its judgement in the "Celebići" case on 16 November 1998, finding three of the defendants guilty of grave breaches and war crimes, and acquitting another defendant of all charges. Zdravko Mucić, a Bosnian Croat commander of the Celebići detention camp where acts of rape and other sexual violence were committed, was convicted on 11 counts

of grave breaches and war crimes. He was sentenced to seven years' imprisonment. Hazim Delić, a Bosnian Muslim deputy commander of the Celebići camp, was convicted on 13 counts of grave breaches and war crimes, including for multiple acts of rape as torture. He was sentenced to 20 years' imprisonment. Esad Landžo, a Bosnian Muslim guard at the camp, testified at trial to committing various acts of sexual violence, including forcing two brothers to perform oral sex on each other and placing a burning fuse around their genitals. He was convicted on 17 counts of grave breaches and war crimes and sentenced to 15 years' imprisonment.

55. In its analysis of rape as torture, the Trial Chamber in the "Celebići" case cited the Special Rapporteur's final report on systematic rape, sexual slavery and slavery-like practices during armed conflict.

> "Finally, in a recent report, the United Nations Special Rapporteur on Contemporary Forms of Slavery, Systematic Rape and Slavery-like Practices during Armed Conflict, has considered the issue of rape as torture with particular regard to the prohibited purpose of discrimination. The United Nations Special Rapporteur referred to the fact that the Convention on the Elimination of All Forms of Discrimination Against Women has recognized that violence directed against a woman because she is a woman, including acts that inflict physical, mental or sexual harm or suffering, represent a form of discrimination that seriously inhibits the ability of women to enjoy human rights and freedoms. Upon this basis, the United Nations Special Rapporteur opined that, 'in many cases the discrimination prong of the definition of torture in the Torture Convention provides an additional basis for prosecuting rape and sexual violence as torture'."[66]

56. Several defendants in the ICTY have been indicted and prosecuted on the basis of superior responsibility, or as it is alternatively referred to, superior authority or command responsibility.[67] In convicting both the commander and the deputy commander of the Celebići detention camp, the Trial Chamber stated: "Thus, a superior may be held criminally responsible not only for ordering, instigating or planning criminal acts carried out by his subordinates, but also for failing to take measures to prevent or repress the unlawful conduct of his subordinates."[68] The Trial Chamber further noted that "the applicability of the principle of superior responsibility ... extends not only to military commanders but also to individuals in non-military positions of superior authority."[69]

57. In this regard, it is an important development that the President of the Federal Republic of Yugoslavia (FRY), Slobodan Milosević, is under indictment for suspected crimes committed in Kosovo.[70] Milosević has been charged with crimes against humanity and war crimes on the basis of both individual and superior responsibility.[71] In a separate indictment, another civilian leader, Radovan Karadžić, has been charged on the basis of superior authority with crimes allegedly committed in Bosnia, including rape and sexual abuse.[72]

58. It is crucial that those persons in positions of authority, military commanders and civilian leaders alike, who order subordinates to commit acts of sexual violence, or who otherwise knew or should have known that such acts were likely to be committed and failed to take steps to

prevent them, are held fully responsible for the commission of the international crimes which these acts may constitute, including war crimes, slavery, crimes against humanity, genocide and torture. Where rape and other acts of sexual violence occur in a widespread or systematic manner, superior authorities should be presumed to have knowledge of the acts. Of course, a superior authority who participates in or is present during the commission of acts of sexual violence is directly liable under individual responsibility as a co-perpetrator or for aiding and abetting in the crime.

B. International Tribunal for Rwanda

59. As at April 2000, the ICTR had issued public indictments against 50 individuals, of whom 44 were in custody.[73] Several ICTR indictments include charges of sexual violence. In one indictment, Arsène Shalom Ntahobali is charged jointly with his mother, Pauline Nyiramasuhuko, the former Minister of Women's Development and Family Welfare, with genocide, crimes against humanity and serious violations of common article 3 and Additional Protocol II to the Geneva Conventions. The two indictees allegedly controlled a roadblock near their home where members of the Tutsi ethnic group were kidnapped, abused and killed. Ntahobali is charged with kidnapping and raping Tutsi women, and both he and his mother are charged with outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and indecent assault.[74]

60. The amended indictment of Laurent Semanza also contains charges of sexual violence,[75] as does the amended indictment of Alfred Musema.[76] In another ICTR indictment, Omar Serushago, a Hutu militia leader, initially was charged with five counts of genocide and crimes against humanity, including one count of rape as a crime against humanity, which was later withdrawn by the Prosecutor.[77] Also noteworthy is the case of Georges Ruggiu, who was prosecuted for using propaganda to perpetuate ethnic and gender stereotypes in a manner calculated to bring about violence against a targeted group.[78]

61. The concluded trial of Jean-Paul Akayesu in the ICTR is historic and important for several reasons.[79] The original indictment against Akayesu, the Hutu bourgmestre (mayor) of Taba, contained no charges relating to sexual violence. The indictment, however, was amended to include allegations of sexual violence against Tutsi women, including rape and forced nudity.[80] Akayesu was found guilty of genocide; incitement to commit genocide (through public speeches); and crimes against humanity for extermination, murder, torture, rape, and other inhumane acts, including forced nudity.[81] The defendant was not accused of physically committing the acts of sexual violence, but of being present during the acts, thereby encouraging them, and of knowing such acts were being committed by his subordinates and failing to stop them.[82]

62. The definitions of rape and sexual violence used in the Akayesu decision are as follows:

> "The Trial Chamber defines rape as a physical invasion of a sexual nature, committed on a person under circumstances which are coercive. The Tribunal considers sexual violence, which includes rape, as any act of a sexual nature which is committed on a

> person under circumstances which are coercive. Sexual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact."[83]

63. The Trial Chamber found that, in the facts of this case, acts of sexual violence, including rape, were constituent acts of crimes against humanity and torture. In determining that rape constituted torture, the Trial Chamber stated:

> "Like torture, rape is used for such purposes as intimidation, degradation, humiliation, discrimination, punishment, control or destruction of a person. Like torture, rape is a violation of personal dignity, and rape in fact constitutes torture when it is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."[84]

64. In addition to crimes against humanity and torture, the Trial Chamber determined that rape and other forms of sexual violence also constitute genocide when committed with specific intent to destroy, in whole or in part, a targeted group. After finding that sexual violence was committed solely against Tutsi women and clearly was an integral part of the physical and psychological destruction of Tutsi women, their families and communities, the Trial Chamber convicted Akayesu of genocide.[85]

65. Akayesu is one of a host of high-level political and government leaders to be indicted and prosecuted in the ICTR,[86] from bourgmestres and prefects to Cabinet Ministers, and even the former Prime Minister of Rwanda, Jean Kambanda.[87] Reinforcing the accepted view that it is not only civilian leaders who must be held responsible for their international crimes committed during armed conflict, the ICTR also has indicted a number of "ordinary" citizens, and the ICTR detainees include a doctor, a pastor, journalists and business owners.

66. Arsène Shalom Ntahobali, indicted on charges including rape and forced nudity, was a store manager.[88] Alfred Musema, convicted of crimes involving sexual violence, was the director of a tea factory.[89] Obed Ruzindana, a former commercial trader, was convicted of genocide and sentenced to 25 years' imprisonment.[90] Although the indictment against Ruzindana did not contain allegations of sexual violence, the Trial Chamber did take sexual violence into consideration. "In particular, the Trial Chamber included testimony of rape and sexual mutilation, and determined that sexual violence had occurred within the context of genocide."[91]

67. A broad range of actors perpetrate international crimes during armed conflict, including crimes involving sexual violence, for which they must be investigated, prosecuted and punished. These persons include not only combatants and military commanders, but also government leaders, politicians, bureaucrats and others from every trade, profession and socio-economic group. Civilians must be held responsible not only when they personally commit acts which constitute slavery, crimes against humanity, genocide, torture or war crimes,[92] but also when they contribute, through their complicitous acts, to the commission of such international crimes.

V. THE RIGHT TO REPARATION

68. The right of victims to reparation for gross violations of international law is a critical issue with respect to sexual slavery and other forms of sexual violence, including rape, committed during armed conflict. The right of reparation, as defined in international law, includes compensation of victims, punishment of perpetrators, apology or atonement, assurances of non-repetition, and other forms of satisfaction proportionate to the gravity of the violations.[93]

69. The right of victims to reparation has been elaborated further in a revised set of basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law.[94] The initial report on the revised guidelines maintains the following:

> "In seeking to clarify both the terms and the concepts of the right to reparation, the expert believes it necessary to adopt the victim of the violations as the point of departure for the development of coherent guidelines governing this right. Extraneous considerations concerning sources of law, or the particular interests of one or other Government, should not obscure the fundamental imperative of ensuring that victims of violations receive reparation."[95]

70. The revised guidelines bring much-needed clarity and consistency to the issue of the right of victims to reparation, including for sexual violence committed during armed conflict. It is important that the application of these guidelines fully take into consideration the particular needs and circumstances of women and girls who are victims of violations and who require reparation. These considerations include the implications of gender on the actual nature of the violations; the gender-specific consequences of those violations; and the gender-related obstacles that women and girls face in seeking redress.[96]

VI. DEVELOPMENTS CONCERNING JAPAN'S SYSTEM OF MILITARY SEXUAL SLAVERY DURING THE SECOND WORLD WAR

71. One of the most egregious documented cases of sexual slavery was the system of rape camps associated with the Japanese Imperial Army during the Second World War. A significant impetus for the creation of the mandate of the Special Rapporteur was the increasing international recognition of the true scope and character of the harms perpetrated against the more than 200,000 women and girls enslaved in so-called "comfort stations" throughout Asia. The Special Rapporteur, in an appendix to the final report, included a case study on the continuing legal liability of the Government of Japan for the "comfort women" system, which in its totality constitutes crimes against humanity.

72. The atrocities committed against the so-called "comfort women"[97] remain largely unremedied. There has been no reparation to the victims: no official compensation, no official acknowledgement of legal liability, and no prosecutions. While the Government of Japan has taken some steps to apologize for its system of military sexual slavery during the

Second World War, it has not admitted or accepted legal liability and has failed to pay legal compensation to the victims. Thus, the Government of Japan has not discharged fully its obligations under international law.

73. The Committee of Experts on the Application of Conventions and Recommendations of the International Labour Organization has observed that Japan's system of military sexual slavery was in contravention of the ILO Forced Labour Convention, 1930 (No. 29). The Committee repeatedly has requested the Government of Japan to take steps expeditiously to compensate the victims. In June 1999, the ILO Committee stated the following:

> "The Government of Japan should take the initiative of holding meetings with the trade unions concerned, the representative organizations of the women who had been the victims of these acts and the governments of the various countries concerned, in order to find an effective solution responding to the expectations of the majority of the victims."[98]

74. In the absence of a comprehensive resolution of the issue of liability for military sexual slavery during the Second World War, some survivors are seeking reparation through the Japanese national courts. There are approximately 50 lawsuits in Japan claiming compensation for war-related injuries, of which several are on behalf of survivors of sexual slavery. For example, following similar lawsuits filed by women from China, the Netherlands, the Philippines and the Republic of Korea, nine former "comfort women" from Taiwan filed suit in the Tokyo District Court on 14 July 1999 seeking compensation and an apology from the Government of Japan.[99]

75. The Japanese national courts have issued decisions in three cases involving military sexual slavery. On 27 April 1998, the Shimonoseki Branch of the Yamaguchi District Court awarded 300,000 yen (US$ 2,300) to three former "comfort women" from Korea.[100] After establishing as fact that the "comfort women" were confined and forced to have sex with Japanese soldiers, the court in the Shimonoseki decision found that, given the purpose and day-to-day realities of the "comfort stations", the women essentially were held in sexual slavery for which the Government of Japan is responsible. The court held that the basic human rights of the "comfort women" had been infringed upon, and that the failure of the Japanese Diet to legislate a law to compensate the women constituted a violation of Japanese constitutional and statutory law. The Government of Japan is appealing the decision to the Hiroshima High Court.

76. In contrast to the Shimonoseki decision, the Tokyo District Court, on 9 October 1998, denied the claims of 46 former "comfort women" from the Philippines after a five-year trial, during which time 7 of the plaintiffs died.[101] The plaintiffs are appealing the case to the Tokyo High Court. The Tokyo District Court also denied the claims of a former Dutch "comfort woman" on 30 November 1998.[102] Several other former "comfort women" have cases pending in Japanese national courts.[103]

77. Legislation has been proposed in Japan calling for the establishment of a fact-finding bureau to investigate Japan's system of military sexual slavery and other issues, including compensation for war-related injuries and violations.[104] Legislation also has been introduced in

the Philippines urging the Japanese Diet to accept the recommendations of the Special Rapporteur's final report "and enact a post-war compensation law that would fulfil the demands of justice for the women victims of sexual slavery or 'comfort women'."[105]

78. The Special Rapporteur notes that there have been encouraging efforts to redress abuses that took place in the European theatre during the Second World War. These efforts include trials of Nazi war criminals,[106] agreements to compensate Holocaust victims whose assets were confiscated by the Nazis,[107] and agreements to compensate victims of wartime forced labour.[108] For example, the Government of Germany has agreed to compensate approximately 235 United States' citizens who were imprisoned in Nazi concentration camps.[109] The Special Rapporteur reiterates that in order to end impunity for gross violations of international law committed during armed conflict, the legal liability of all responsible parties, including Governments, must be acknowledged, and the victims must be provided with full redress, including legal compensation and prosecution of the perpetrators.

VII. RECOMMENDATIONS

79. While efforts are being made to address sexual violence during armed conflict, the fact that such atrocities still occur evinces the necessity of more concerted action by the international community in general, and particularly the United Nations, Governments, and non-governmental actors. The recommendations put forward in the Special Rapporteur's final report[110] are as salient now as ever, and further steps should be taken to implement them.

80. **Legislation at the national level.** States should enact special legislation incorporating human rights, humanitarian and international criminal law into their municipal legal systems, including legislation providing universal jurisdiction for violations of jus cogens norms such as slavery, crimes against humanity, genocide, torture and other international crimes.[111] Domestic law codifications of international criminal law should specifically criminalize slavery and sexual violence, including rape, as grave breaches of the Geneva Conventions, war crimes, torture and constituent acts of crimes against humanity and genocide, irrespective of the territorial location of the crime. With respect to grave breaches of the Geneva Conventions, the Commission on Human Rights has reiterated that States have an "obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches and to bring such persons, regardless of their nationality, before their own courts."[112]

81. The regulations and training materials of military and security forces must explicitly address the prohibition of sexual violence during armed conflict. Appropriate disciplinary mechanisms must be in place to ensure that unlawful conduct on the part of the military or security forces is investigated and punished at the administrative level, in addition to any other national or international proceedings that may be brought. The Special Rapporteur was encouraged to learn during her June 1999 mission to Sierra Leone that the High Command of the Ceasefire Monitoring Group of the Economic Community of West African States (ECOMOG) had initiated a Civil/Military Relations Committee to investigate allegations of human rights and humanitarian law violations committed by ECOMOG forces and members of the Civilian Defense Force and to recommend appropriate action to higher authorities.[113] States should also provide for specific training on human rights, humanitarian and international criminal law to members of the judiciary and legislature.

82. The Sub-Commission, in consultation with other relevant United Nations bodies, should facilitate public reporting by the Secretary-General on steps that have been taken to incorporate humanitarian law into municipal legal systems of member States and the extent to which domestic laws provide jurisdiction for the prosecution of persons who commit humanitarian law violations. Further, the Security Council has requested the Secretary-General to "identify contributions the Council could make toward effective implementation of existing humanitarian law" and to "examine whether there are any significant gaps in existing legal norms."[114] The Special Rapporteur recommends that emphasis be placed on the need to address sexual violence during armed conflict. The Secretary-General also should stress to the Security Council that the effective protection of civilians during armed conflict requires special consideration of the needs and circumstances of women and girls.

83. **Removal of gender bias in municipal law and procedure.** States must ensure that their legal systems at all levels conform to internationally accepted norms. They must be capable of adjudicating international crimes and administering justice without gender bias.[115] Domestic courts, laws and practices must not discriminate against women in substantive legal definitions or in matters of evidence or procedure. States should review and revise their laws and practices to ensure that they promote equal access to justice for women and men, and provide equally effective remedies and forms of redress for violations of international law. The Sub-Commission, in consultation with other relevant United Nations bodies, should facilitate public reporting of information on substantive, evidentiary and procedural barriers in domestic legal systems to prosecuting violence against women, including sexual violence.

84. **Adequate protection for victims and witnesses.** In prosecutions of international crimes at the international or national levels, including those involving sexual violence, victims and witnesses must be protected from intimidation, retaliation and reprisals at all stages of the proceedings and thereafter.[116] Such protection may require witness relocation programmes or confidentiality of witnesses' identities, and is particularly necessary in cases where the assailants remain at large in the community. There must be adequate and appropriate resources, structures and personnel for the protection of victims and witnesses, including female translators and investigators. States should review and revise where necessary their asylum and refugee determination procedures to ensure their capacity to grant asylum or refugee status to those persons with a well-founded fear of persecution through sexual or gender-based violence.

85. **Appropriate support services for victims.** In addition to having their cases investigated and prosecuted, victims of sexual violence must be afforded appropriate support services, including psycho-social counselling,[117] legal assistance, emergency medical care and reproductive health services that are responsive to the devastating effects of sexual violence, including unwanted pregnancies, sexually transmitted disease, mutilation and other physical damage. At the same time, in the context of armed conflict, it is crucial not to overlook the fact that many victims of sexual violence also will have suffered violence of a non-sexual nature. Women who have been raped, for instance, should not be characterized solely as "the rape victims", as this ignores the totality of the violations they may have endured.

86. **The International Criminal Court.** The United Nations High Commissioner for Human Rights should facilitate an ongoing dialogue between the relevant bodies of the United Nations, including the Office of the Prosecutor for the International Criminal Tribunal for

the Former Yugoslavia and for the International Tribunal for Rwanda, the Commission on Human Rights and the Sub-Commission, with regard to the International Criminal Court. To further this dialogue, the High Commissioner should convene a meeting to develop principles and recommendations to ensure that investigations and prosecutions proceed in the International Criminal Court with due regard for the need to integrate fully a gender perspective and analysis into the work of the Court, and to incorporate considerations of gender into the recruitment and training of Court personnel, as provided for in the Statute of the ICC.

87. **Documentation with a view toward eventual prosecution.** The Office of the United Nations High Commissioner for Human Rights, operating through field missions and other services, should take the lead in documenting or facilitating the documentation of sexual violence in conflict situations, with a view toward eventual prosecution. This will require that efforts be made to recruit, train and employ female translators and investigators, and that all translators and investigators be given specific training on appropriate documentation techniques. Efforts also should be made to coordinate with investigators from governmental institutions and non-governmental organizations, humanitarian and relief agencies, health care providers, journalists and others, in order to reduce the trauma of victims and witnesses in recounting their stories. Steps should be taken by all relevant actors, including local women's groups, to understand fully and address appropriately the reluctance of many victims of sexual violence to report the crimes due to fear of ostracism and discrimination in their families and communities. These steps may include public education, outreach and media campaigns designed to dispel harmful and demeaning stereotypes about women and men, and to remove the religious, cultural and social stigma often associated with sexual violence.

88. **Action at the cessation of hostilities.** It is increasingly the practice for concerned parties to include "human rights chapters" in peace treaties obliging the parties to ratify and observe international human rights instruments and principles. The prosecution of perpetrators and compensation of victims of international crimes committed during armed conflict generally are not contemplated in the peace negotiations and agreements. In fact, amnesty often is granted by the Government involved to those persons who have committed crimes such as slavery, crimes against humanity, genocide, war crimes and torture. Demands for amnesty should be denied. Nevertheless, even if amnesty is offered at the national level, perpetrators still may be subject to prosecution by international tribunals, as well as in the domestic courts of other States which may have jurisdiction. Peace agreements concluded at the cessation of hostilities should contain provisions designed to break the cycle of impunity and to ensure the effective investigation and redress of sexual slavery and sexual violence, including rape, committed during the armed conflict. In addition, peace treaties must not seek to extinguish the rights of victims to reparation and other forms of legal redress. It is further recommended that States develop and implement appropriate responses to sexual and other forms of violence against women which often escalate after the cessation of hostilities, in particular, domestic violence and trafficking of women and girls.

89. The international community, including the United Nations, must give maximum support to rebuilding effective, accessible and non-discriminatory municipal legal systems following the cessation of hostilities and ensure adequate prosecutions of international crimes committed during the conflict, including those involving sexual violence. The involvement of women in the

peace-building process is crucial to maintaining lasting peace, achieving reconciliation and rebuilding war-torn societies. At the Fourth World Conference on Women, the Governments of the world agreed to the following objective:

> "[States must strengthen] the role of women and ensure equal representation of women at all decision-making levels in national and international institutions which may make or influence policy with regard to matters related to peace-keeping, preventive diplomacy and related activities and in all stages of peace mediation and negotiations."[118]

VIII. CONCLUSION

90. There is a need for an understanding of the gender implications of sexual violence not only in the context of armed conflict but also in the everyday lives of women and girls everywhere. Women and girls are subordinated, devalued and discriminated against in all societies, although to varying degrees. This gender inequality is compounded further by racial, ethnic, religious or other forms of discrimination that women members of minority groups often face - which not only increases the vulnerability of these women and girls to sexual violence, but also creates additional significant obstacles to asserting their rights and seeking redress and healing for violations committed against them.[119]

91. One aspect of gender inequality is that rape and other acts of sexual violence, to a large extent, still are linked to gender-based concepts of a family's "honour". Often the shame, ostracism and dishonour that should be imputed to the perpetrator of sexual violence attaches instead to the survivor. The veil of silence which surrounds crimes of sexual violence can seem more like an iron curtain. However, this silence is being lifted as women and girls courageously are reporting their experiences and demanding justice. The world must ensure that their pain in coming forward will not be in vain.

92. It is indeed unfortunate that by the time reports of sexual slavery and sexual violence in conflict situations reach those outside of the conflict, in some respects, it is already too late. The international community must continue its efforts to identify and avert impending conflicts, monitor the conduct of all parties to a conflict, and develop more timely and effective responses to reported atrocities, whether through diplomacy, economic, political or public pressure, humanitarian or development aid, or other methods. The international community has taken important steps to document and respond to abuses and to provide relief to civilians caught in the conflict in Kosovo. A similar strong response is necessary in Sierra Leone and elsewhere.

93. Although the international community heralds the establishment of a permanent International Criminal Court, and the continuing work of the International Criminal Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda, these international mechanisms will be available to address only a small fraction of the violations that are being committed in contemporary armed conflicts around the world. Thus, it remains imperative that prosecutions of international crimes, such as slavery, take place at the national level, and that all acts of sexual violence are investigated and redressed effectively. Only then can the world hope for a future in which sexual violence is not used as a weapon of war.

Notes

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[2] This definition of the term slavery is adapted from the 1926 Slavery Convention. See also Rome Statute of the International Criminal Court, A/CONF.183/9 (July 1998), article 7 (2) (c).

[3] See Prosecutor v. Kunarac [International Criminal Tribunal for the Former Yugoslavia] Prosecutor's Pre-Trial Brief, No. IT-96-23-PT (8 February 1999) (identifying several indicia of slavery, including control of movement; control of physical environment; psychological control; measures taken to prevent or deter escape; force; threat of force or coercion; duration; assertion of exclusivity; subjection to cruel treatment and abuse; control of sexuality; and ability to buy or sell). "The essence of slavery, then, is the subjugation of an individual to the powers of ownership by another", p. 37. See also final report submitted by Ms. Gay J. McDougall, Special Rapporteur on systematic rape, sexual slavery and slavery-like practices during armed conflict (E/CN.4/Sub.2/1998/13) (22 June 1998) (hereinafter "final report"), paras. 27-33 (on the definition of slavery, including sexual slavery).

[4] See final report, paras. 36, 37, 46 and 85 (on the doctrine of jus cogens).

[5] See e.g. Report on the situation of human rights in Afghanistan submitted by Mr. Kamal Hossain, Special Rapporteur (E/CN.4/1999/40) (24 March 1999), para. 31 (v), in which the Special Rapporteur recommends the following:

> "All parties to the Afghan conflict should be urged to publicly reaffirm that they are committed to safeguarding internationally recognized human rights and to take measures to prevent human rights abuses, such as deliberate and arbitrary killings, torture including rape, abduction of people for ransom or on grounds of their ethnic identity, religion or political opinions. Such measures would include accepting independent and impartial procedures for investigating reports of human rights abuses and breaches of humanitarian law."

[6] See e.g. Human Rights Watch, Proxy Targets: Civilians in the Civil War in Burundi (April 1998).

[7] See e.g., United States Department of State, Country Reports on Human Rights Practices for 1998, Colombia (April 1999), pp. 558, 565.

[8] In General Assembly resolution 53/160 on the situation of human rights in the Democratic Republic of the Congo (9 February 1999) the Assembly expressed "its concern at the deterioration of the situation of human rights in the Democratic Republic of the Congo, aggravated by the ongoing conflict in the country and the continuing violations of human rights

and international humanitarian law committed in the territory of the Democratic Republic of the Congo, in particular cases of summary and arbitrary execution, disappearances, torture, beatings, arbitrary arrest and detention without trial, sexual violence against women and children and the use of child soldiers", para. 3.

[9] See e.g. Shana Swiss, M.D. et al, "Violence against women during the Liberian civil conflict", Journal of the American Medical Association, Abstracts, 25 February 1998.

[10] Commission on Human Rights resolution 1998/63 on the situation of human rights in Myanmar, para. 3 (c). The Commission expressed its deep concern at the "violations of the rights of women, especially women who are refugees, internally displaced women and women belonging to ethnic minorities or the political opposition, in particular forced labour, sexual violence and exploitation, including rape, as reported by the Special Rapporteur [on Myanmar]."

[11] Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, on the mission to Indonesia and East Timor on the issue of violence against women (E/CN.4/1999/68/Add.3) (21 January 1999), para. 43; see also paras 75-110 (on rape and other abuses committed in these regions). "Much of the violence against women in Aceh, Irian Jaya and East Timor was perpetrated in the context of these areas being treated as military zones, which resulted in the subordination of certain civil processes", para. 56. The Special Rapporteur recommended the following:

> "It is increasingly recognized that victims of violence against women need to be compensated and that they require support services. Especially in East Timor, Aceh and Irian Jaya, it is important that the Government set up a process whereby rape victims are compensated. In addition, there appears to be a need for more crisis centres where victims of violence can take shelter and receive legal counselling, vocational training and psychological counselling", para. 54.

[12] Ibid., paras. 62-74 (on rape of ethnic Chinese women). See also Human Rights Watch, World Report 1999, Indonesia and East Timor (December 1998), p. 191.

[13] See Human Rights Watch, The Damaging Debate on Rapes of Ethnic Chinese Women (8 September 1998).

[14] See United States Department of State, Country Reports on Human Rights Practices for 1998, Indonesia (April 1999), pp. 904, 913, 925. "The team stated that the number of incidents probably was higher but that intimidation against witnesses and victims, as well as the reluctance of some victims to report the attacks, had prevented the team from documenting more attacks", para. 925.

[15] Report of the Secretary-General on the abduction of children from northern Uganda (E/CN.4/1999/69) (27 January 1999), para. 5. See also Commission on Human Rights resolution 1998/75 on the abduction of children from northern Uganda, in which the Commission expressed profound concern "at the continuing abduction, torture, detention, rape and forced recruitment of children from northern Uganda."

[16] Also, in Algeria, there continued to be reports of armed rebels abducting women and girls and holding them in captivity as sexual slaves under the guise of "marriage". The victims often were subsequently killed by the rebels. See e.g. Human Rights Watch, World Report 1999, Algeria (December 1998), p. 334. See also Charles Trueheart, "Algeria's President-Elect confronts reign of despair", The Washington Post, 18 April 1999.

[17] UNFPA, Assessment Report on Sexual Violence in Kosovo, mission completed by D. Serrano Fitamant, 27 April-8 May 1999, Albania. The report, based on interviews with refugees and health providers, is available at the United Nations Population Fund Web site (http://www.unfpa.org). See also Sam Kiley, "Serbs make rape a weapon of war", The Times (London), 6 April 1999; Carlotta Gall, "Refugees crossing Kosovo border tell of rapes and killings", New York Times, 20 April 1999; David Rhode, "Albanian tells how Serbs chose her, 'the most beautiful one,' for rape", New York Times, 1 May 1999. The Government of the United States also released a report on violations committed in the Kosovo conflict. See United States Department of State, Erasing History: Ethnic Cleansing in Kosovo (May 1999).

[18] See e.g. Elisabeth Bumiller, "Kosovo victims must choose to deny rape or be hated", New York Times, 22 June 1999.

[19] See e.g. Gordana Igric, "Kosovo rape victims suffer twice", Institute for War and Peace Reporting, 18 June 1999. The article reports that many of the Muslim women who had been held in the Foča rape camp in Bosnia found themselves ostracized by other refugees at a refugee camp in Turkey. Unfortunately, such ostracism is a common occurrence. See e.g. Jan-Ruff-O'Herne, Fifty Years of Silence (1994) (describing the treatment of former Dutch "comfort women" who returned to their internment camp only to be ignored or referred to as "whores" by other internees).

[20] See Human Rights Watch, Getting Away with Murder, Mutilation, and Rape: New Testimony from Sierra Leone (June 1999), pp. 9, 31-38:

> "Throughout the occupation, the rebels perpetrated organized and widespread sexual violence against girls and women. The rebels launched operations in which they rounded up girls and women, brought them to rebel command centres, and then subjected them to individual and gang-rape. The sexual abuse was frequently characterized by extreme brutality. Young girls under seventeen, and particularly virgins, were specifically targeted, and hundreds of them were later abducted by the rebels", p. 9.

[21] Sixth report of the Secretary-General on the United Nations Observer Mission in Sierra Leone (S/1999/645) (4 June 1999), paras. 28-32. See also Joint Statement by Carol Bellamy, Executive Director of UNICEF; Sadako Ogata, United Nations High Commissioner for Refugees; Olara Special Representative of the Secretary-General for Children and Armed Conflict; Mary Robinson, United Nations High Commissioner for Human Rights; and Sergio Vieira de Mello, United Nations Emergency Relief Coordinator, "Crisis in Sierra Leone highlights urgent need for an International Criminal Court", HR/98/40 (17 June 1998).

[22] Commission on Human Rights resolution 1998/53.

[23] There are many credible accounts of sexual violence committed in the ongoing conflict between the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam. In an encouraging judgement, criminal sentences were handed down by the Colombo High Court against members of the security forces convicted of the rape and murder of a Tamil schoolgirl. See Human Rights Watch, World Report 1999, Sri Lanka (December 1998), p. 208.

[24] At the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (hereinafter "Statute of the ICC").

[25] As at April 2000, the following eight States had ratified the Statute of the ICC: Belize, Fiji, Ghana, Italy, Norway, San Marino, Senegal and Trinidad and Tobago. A list of signatories and ratifications is maintained by the NGO Coalition for an International Criminal Court at its Web site (http://www.iccnow.org/).

[26] Statute of the ICC, article 11.

[27] Ibid, article 7 (3).

[28] United Nations Development Fund for Women (UNIFEM), Integration of Women's Human Rights into the Work of the Special Rapporteurs (E/CN.4/1997/131), annex (3 April 1997), para. 3. See also the report of the Secretary-General on integrating the human rights of women throughout the United Nations system (E/CN.4/1997/40) (20 December 1996), para. 10:

> "The gender approach which emerged within the United Nations system acknowledges the distinction between the biological and social differences of men and women. As sex refers to biologically determined differences between men and women that are universal, so gender refers to the social differences between men and women that are learned, changeable over time and have wide variations both within and between cultures. Gender is a socio-economic variable in the analysis of roles, responsibilities, constraints, opportunities and needs of men and women in any context" (note omitted).

[29] Article 7 (2) (f) of the Statute of the ICC defines "forced pregnancy" as the "unlawful confinement, of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law." Article 7 (2) (f) continues: "This definition shall not in any way be interpreted as affecting national laws relating to pregnancy."

[30] PCNICC/1999/L.5/Rev.1/Add.2 (22 December 1999), p.11.

[31] The drafters of the Statute of the ICC were vigilant to have identical language for grave breaches committed in international conflicts and for violations of common article 3 committed in non-international armed conflicts.

[32] The Trial Chamber of the International Criminal Tribunal for Rwanda in the Akayesu decision, Prosecutor v. Akayesu, Judgement, No. ICTR-96-4-T (2 September 1998), para. 506, has found that:

> "... measures intended to prevent births within the group, should be construed as sexual mutilation, the practice of sterilization, forced birth control, separation of the sexes and prohibition of marriages. In patriarchal societies, where membership of a group is determined by the identity of the father, an example of a measure intended to prevent births within a group is the case where, during rape, a woman of the said group is deliberately impregnated by a man of another group, with the intent to have her give birth to a child who will consequently not belong to its mother's group."

[33] Statute of the ICC, article 7 (1) (f).

[34] Ibid., article 8 (2) (a) (ii).

[35] Ibid., article 7 (1) (k).

[36] Ibid., article 8 (2) (a) (iii).

[37] Ibid., article 8 (2) (b) (xxi). See also article 8 (2) (b) (i), 8 (2) (b) (x) and 8 (2) 9 (b) (xi) on other serious violations of the laws and customs of war in international armed conflict.

[38] Ibid., article 8 (2) (c) (ii).

[39] Ibid., article 8 (2) (c) (i). See also article 8 (2) (e) (i) and 8 (2) (e) (xi) on other serious violations of common article 3 in non-international armed conflict.

[40] Article 36 (8) (b) of the Statute of the ICC provides: "States Parties shall also take into account the need to include judges with legal expertise on specific issues, including, but not limited to, violence against women or children." Article 42 (9) provides: "The Prosecutor shall appoint advisers with legal expertise on specific issues, including, but not limited to, sexual and gender violence and violence against children." Article 43 (6) stipulates that the Victims and Witnesses Unit within the Registry "shall include staff with expertise in trauma, including trauma related to crimes of sexual violence."

[41] Statute of the ICC, article 68 (1).

[42] Ibid. See also final report, para. 104 (recommending that victims and witnesses in cases of sexual violence committed during armed conflict be protected from intimidation, retaliation and reprisals and be afforded appropriate support services, including medical care, reproductive health care, counselling and legal assistance).

[43] Statute of the ICC, article 68 (2).

[44] See final report, paras. 88-90 (on the right to an effective remedy and the duty to compensate).

[45] Ibid., para. 90 (on the non-applicability of statutes of limitations).

[46] Ibid., paras. 74-84 (on holding individuals responsible).

[47] It is arguable that included among these criminally liable persons would be those described as functionnaires in the final report (paras. 83-84) who play critical, supporting roles in the bureaucratic or political processes that make the commission of international crimes possible.

[48] This would include propagandists who perpetuate racial, ethnic, religious, gender or other stereotypes in a manner calculated to bring about genocidal violence. See final report, paras. 81-82. See also infra note 78 and accompanying text (on the indictment of journalist and broadcaster Georges Ruggiu) by the International Tribunal for Rwanda.

[49] Statute of the ICC, article 17 (2).

[50] Ibid., article 17 (3).

[51] See final report, para. 95 (on the common failings of municipal law and procedure).

[52] Statute of the ICC, articles 12-15.

[53] Ibid., article 13 (b). A further limitation on the International Criminal Court is that the Security Council, by resolution, can defer a case and stop the Court from commencing or proceeding with an investigation or prosecution of a case for a renewable period of 12 months.

[54] The Trial Chamber for the ICTY has defined rape as "(i) the sexual penetration, however slight: (a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; (b) or of the mouth of the victim by the penis of the perpetrator; (ii) by coercion or force or threat of force against the victim or a third person." Prosecutor v. Furundžija, infra note 64, para. 185. The Trial Chamber for the ICTR has defined rape as "a physical invasion of a sexual nature, committed on a person under circumstances which are coercive." Prosecutor v. Akayesu, infra note 79, para. 686.

[55] Prosecutor v. Akayesu, infra note 79, para. 686. Cf. final report, para. 21 (on the definition of sexual violence, including rape).

[56] No. IT-96-23-PT. Kunarac was initially charged in the "Foča" indictment, No. IT-96-23 (26 June 1996), amended in 1998 to bring solo charges against the accused. The "Foča" indictment, in which members of a Serb paramilitary unit are charged with slavery as a crime against humanity for detaining nine women in an apartment for the purposes of sexual slavery and forced labour, is discussed in the final report, notes 15, 31, 52 and accompanying text.

[57] No. IT-96-23-I, Amended Indictment (19 August 1998), para. 9.2 (Counts 14-17 of the Indictment). See also No. IT-96-23, Second Amended Indictment (6 September 1999), Third Amended Indictment (1 December 1999).

[58] No. IT-96-23-I, Amended Indictment (19 August 1998), paras. 10.1-10.4 (Counts 18-21 of the Indictment)

[59] See supra note 4 and accompanying text (on the doctrine of jus cogens).

[60] See Kelly D. Askin, Women and International Humanitarian Law, in Women and International Human Rights Law, vol. 1 (Kelly D. Askin and Dorean M. Koenig, eds.) (1999), pp. 41, 83-87.

[61] In the International Criminal Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda, the rules of procedure and evidence provide that in cases involving sexual assault, consent shall not be allowed as a defence if the victim had been subjected to or threatened with violence, duress, detention or psychological oppression. International Criminal Tribunal for the Former Yugoslavia, Rules of procedure and evidence, as amended on 25 July 1997, rule 96 (Evidence in cases of sexual assault), International Tribunal for Rwanda, Rules of procedure and evidence, adopted on 29 June 1995, Rule 96 (Rules of evidence in cases of sexual assault). See also final report, para. 25. "The manifestly coercive circumstances that exist in all armed conflict situations establish a presumption of non-consent and negates the need for the prosecution to establish a lack of consent as an element of the crime."

Further, a defence of consent clearly should not be allowed when the sexual assault is charged and prosecuted as slavery, crimes against humanity, genocide, torture or other jus cogens crimes to which issues of consent are irrelevant.

[62] "Fact Sheet on ICTY Proceedings", PIS/FS-70 (26 April 2000), available at the ICTY website (http //www un org/icty). As at April 2000, 18 individuals had charges against them dropped, seven accused had died, one defendant was acquitted and released, one defendant was convicted and credited with time served and released, another was serving his sentence after pleading guilty, and 27 accused individuals were at large. "ICTY Key Figures", PIS/FS-04 (26 April 2000), available at the ICTY Web site (http //www un org/icty).

[63] Kelly D. Askin, Sexual Violence in Decisions and Indictments of the Yugoslav and Rwandan Tribunals: Current Status, American Journal of International Law vol. 93 (1999), p. 99. For a list and discussion of the indictments containing allegations of sexual violence, see ibid., pp. 99 (note 13), 116-120. These indictments are as follows:

Tadic, No. IT-94-1 (13 February 1995), amended, No. IT-94-1-T (1 September 1995), amended No. IT-94-1-T (14 December 1995);
Meakic and others, "Omarska Camp", No. IT-95-4 (13 February 1995);
Sikirica and others, "Keraterm Camp", No. IT-95-8 (21 July 1995);
Miljkovic and others, "Bosanski Šamac", No. IT-95-9 (21 July 1995), also known as Simić and others, indictment amended on 11 December 1998 to include new sexual violence charges against one of the accused, Todorović;
Jelisic and Cesić, "Brčko", No. IT-95-10 (21 July 1995), amended, No. IT-95-10-PT (3 March 1998) (Cesić allegedly forced two Muslim brothers to sexually abuse each other);
Karadžić and Mladić, No. IT-95-5 (25 July 1995), Prosecutor v. Karadžić and Mladić, Review of the indictment pursuant to rule 61, Nos. IT-95-5-R61, IT-95-18-R61 (11 July 1996).

Furundžija, "Lašva River Valley", (10 November 1995), amended, No. IT-95-17/1-PT (2 June 1998) (sealed indictment, redacted version);
Delalić and others, "Celebići", No. IT-96-21 (21 March 1996);
Gagović and others, "Foča", No. IT-96-23 (26 June 1996), indictment amended on 13 July 1998 to bring sexual violence charges against one of the accused, Kunarac;
Kovačevič and Drljaca, No. IT-97-24 (13 March 1997) (case officially closed);
Kvočka and others, "Omarska and Keraterm Camps", IT-98-30 (10 December 1998).

In Prosecutor v. Nikolić, Review of the indictment pursuant to rule 61, No. IT-94-2-R61 (20 October 1995), the Trial Chamber invited the Prosecutor to amend the indictment to include charges of sexual violence. Askin, p. 115.

[64] Prosecutor v. Tadić, Opinion and Judgement, No. IT-94-1-T (7 May 1997); Prosecutor v. Delalić, Judgement, No. IT-96-21-T (16 November 1998); Prosecutor v. Furundžija, Judgement, No. IT-95-17/1-T (10 December 1998). The Delalić and Furundžija cases are before the Appeals Chamber. The Tadić case concluded with the defendant's sentence reduced by the Appeals Chamber to 20 years' imprisonment.

[65] The defence in the Furundžija case argued that the testimony of the victim should be inadmissible because she had been traumatized by her ordeal. The Trial Chamber ruled, however, that a person may suffer from post-traumatic stress disorder and still be a perfectly reliable witness. Prosecutor v. Furundžija, Decision [on Defence Motion to Strike Testimony of Witness A], No. IT-95-17/1-T (16 July 1998), para. 109.

[66] "Celebići", para. 493 (citing the Special Rapporteur's final report, para. 55). The Trial Chamber also cited the decision of the International Tribunal for Rwanda in the Akayesu case, discussed infra, in which rape was found to constitute torture. Ibid., para. 490.

[67] The International Criminal Tribunal for the Former Yugoslavia has used the term "superior responsibility" and "superior authority" interchangeably. The International Tribunal for Rwanda and other authorities have referred to the doctrine as "command responsibility". See final report, paras. 76-80 (on command responsibility).

[68] "Celebići", para. 333. Another military commander, Zejnil Delalić, a Bosnian Muslim, was acquitted of 12 counts of grave breaches and war crimes and released immediately.

[69] Ibid., para. 363.

[70] No. IT-99-37-I (22 May 1999). "This indictment is the first in the history of this Tribunal to charge a Head of State during an ongoing armed conflict with the commission of serious violations of international humanitarian law." Louise Arbour, ICTY Prosecutor, Presentation of an indictment for review and application for warrants of arrest and for related orders.

[71] Milosević's co-indictees include the President of Serbia, Milan Milutinović; the Deputy Prime Minister of the FRY, Nikola Sainović; the Chief of the General Staff of the FRY's Armed

Forces, Col. Gen. Dragoljub Ojdanić; and the Minister of Internal Affairs of Serbia, Vlajko Stojiljković. All five indictees have been charged with deportation, murder and persecution as crimes against humanity, and with murder as a violation of the laws or customs of war. The May 1999 indictment is a welcome development, although the question remains as to whether there would have been a crisis in Kosovo had Milosević been prosecuted for alleged crimes committed in the related Bosnian conflict, which also was conducted under his leadership as then-President of Serbia.

[72] No. IT-95-5 (25 July 1995). Karadžić, the former President of the Serbian Democratic Party, has been charged along with Gen. Ratko Mladić, the former commander of the Bosnian Serb army. See also, Prosecutor v. Karadžić and Mladić, Review of the Indictment pursuant to rule 61, Nos. IT-95-5-R61, IT-95-18-R61 (11 July 1996). Despite the indictment, Mladić was reportedly commanding Serb paramilitary units in Kosovo, along with another indictee, Zeljko Raznjatović (also known as "Arkan", who is now deceased). See United Kingdom Briefing on Operation Allied Force, 14 April 1999.

[73] "International Criminal Tribunal for Rwanda Fact Sheet No. 1: The Tribunal at a Glance" (April 2000), available at the ICTR Web site (http://www.ictr.org).

[74] No. ICTR-97-21-I (26 May 1997), Amended Indictment (10 August 1999).

[75] No. ICTR-97-20-I, Amended Indictment (23 June 1999).

[76] No. ICTR-96-13-I, Amended Indictment (29 April 1999).

[77] No. ICTR-98-39 DP (1998). In December 1998, Serushago pleaded guilty to four of the five counts, but pleaded not guilty to rape as a crime against humanity. After a 10-minute recess, the Prosecutor withdrew the rape charge. Serushago was sentenced to 15 years' imprisonment on 5 February 1999.

[78] No. ICTR-97-32-I (9 October 1997). The indictment of Georges Ruggiu, a Belgian journalist and broadcaster accused of making hate radio broadcasts over Radio Télévision Libre des Milles Collines, contained charges of direct and public incitement to commit genocide and crimes against humanity. Ruggiu pleaded guilty to the charges in May 2000.

[79] Prosecutor v. Akayesu, Judgement, ICTR-96-4-T (2 September 1998). See Askin, p. 105. "The Akayesu case in the Rwandan Tribunal was the first international war crimes trial in history to try and convict a defendant for the crime of genocide."

[80] No. ICTR-96-4-I, Amended Indictment, paras. 10A, 12A, 12B (17 June 1997).

[81] For an overview of the case, see Askin, pp. 105-110. Author states that witnesses testified to the following:

> "... gang rape, public rape, multiple instances of rape, rape with foreign objects, rape of girl-children as young as six years of age, forced nudity, forced abortion, forced marriage, forced miscarriage, rapes specifically intended to humiliate,

> sexual slavery, forced prostitution, sexual torture and sexual enslavement. Frequently, the women and girls were killed after being subjected to sexual violence" p. 107 (notes omitted).

[82] Akayesu, para. 704.

[83] Akayesu, para. 686.

[84] Akayesu, para. 596.

[85] "Indeed, rape and sexual violence certainly constitute infliction of serious bodily and mental harm on the victims and are even, according to the Chamber, one of the worst ways of inflict[ing] harm on the victim." Akayesu, para. 729. The Trial Chamber further found that:

> "... measures intended to prevent births within the group, should be construed as sexual mutilation, the practice of sterilization, forced birth control, separation of the sexes and prohibition of marriages. In patriarchal societies, where membership of a group is determined by the identity of the father, an example of a measure intended to prevent births within a group is the case where, during rape, a woman of the said group is deliberately impregnated by a man of another group, with the intent to have her give birth to a child who will consequently not belong to its mother's group" para. 507.

[86] "ICTR detainees status on 27 April 2000", available at the ICTR Web site (http://www.ictr.org). The chart lists the ICTR detainees under the following classifications: 14 political leaders, 10 senior government administrators and 10 military leaders.

[87] Prosecutor v. Kambanda, ICTR-97-23-S (4 September 1998). Kambanda pleaded guilty to a total of six counts of genocide, conspiracy and incitement to commit genocide, complicity in genocide, and crimes against humanity for murder and extermination. He was sentenced to life imprisonment.

[88] No. ICTR-97-21-I (26 May 1997), discussed supra note 74 and accompanying text.

[89] No. ICTR-96-13-I, Amended Indictment (29 April 1999). Musema was convicted of genocide and crimes against humanity for extermination and for rape. He was sentenced to life imprisonment in January 2000.

[90] Prosecutor v. Kayishema and Ruzindana, Judgement, ICTR-95-1-T (21 May 1998). Ruzindana was tried along with Clément Kayishema, the former prefect of Kibuye. Kayishema was sentenced to life imprisonment.

[91] Kelly Dawn Askin, The International Criminal Tribunal for Rwanda and Its Treatment of Crimes Against Women, in International Humanitarian Law: Origins, Challenges and Practices (John Pritchard and John Carey, eds.) (forthcoming 1999), p. 13.

[92] While the Trial Chamber in the Akayesu decision ruled that the defendant, a civilian, was not liable for war crimes (i.e. violations of common article 3 and Additional Protocol II) because the

Prosecution failed to prove that he had engaged in the conduct of hostilities and had acted in support of the war effort, other authorities support the liability of civilians for war crimes. For instance, in a case before the Nürnberg Tribunal, a Japanese hotel manager who had held Dutch women in sexual slavery was convicted of enforced prostitution as a war crime. Trial of Washio Awochi, Case No. 76, reported in XIII Trials of War Criminals before the Nurenberg Military Tribunal under Control Council Law No. 10 (1946).

[93] Ian Brownlie, Principles of Public International Law (4th ed., 1990), p. 485.

[94] Final report of the Special Rapporteur, Mr. M. Cherif Bassiouni, submitted in accordance with Commission resolution 1999/33 (E/CN.4/2000/62) (18 January 2000), annex. The process of drafting the revised guidelines included synthesizing the work of Mr. Theo van Boven, Special Rapporteur on the right to reparation for victims of gross violations of human rights and humanitarian law, and Mr. Louis Joinet, Special Rapporteur on the question of the impunity of perpetrators of human rights violations.

[95] Report of the independent expert on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, Mr. M. Cherif Bassiouni, submitted pursuant to Commission on Human Rights resolution 1998/43 (E/CN.4/1999/65) (8 February 1999), para. 83.

[96] UNIFEM, Report of the expert group meeting on the development of guidelines for the integration of gender perspectives into United Nations human rights activities and programmes (E/CN.4/1996/105), annex (20 November 1995). See also Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, General Assembly resolution 52/86 of 12 December 1997, annex.

[97] The term "comfort women" is used in this report solely in its historical context. In many ways, the unfortunate choice of such a euphemistic term to describe the atrocity suggests the extent to which the international community as a whole, and the Government of Japan in particular, has sought to minimize the nature of the violations.

[98] Report of the Committee on the Application of Standards, International Labour Conference, 87th Session (June 1999) Geneva, para. 8.

[99] See Taro Karasaki, "Taiwan 'comfort women' join list of claimants", Asahi Evening News, 15 July 1999.

[100] Heisei 4 (wa) 349, 5 (wa) 373, 6 (wa) 51. See also Etsuro Totsuka, "Commentary on a Victory for 'Comfort Women': Japan's Judicial Recognition of Military Sexual Slavery", Pacific Rim Law and Policy Journal vol. 8 (January 1999) p. 47; Taihei Okada, "The 'Comfort Women' Case", ibid., p. 63.

[101] Heisei 5 (wa) 5966, 5 (wa) 17575. The Tokyo District Court held that individuals did not have the right under international law to claim compensation against a State for violations of international law. The court did not make a determination on the facts presented in the case.

[102] Heisei 6 (wa) 1218. While the Tokyo District Court acknowledged that international law violations were committed by the Japanese Imperial Army, it held that individuals did not have the right under international law to claim compensation against a State for violations of international law.

[103] In addition to litigation over military sexual slavery, numerous cases have been filed in Japanese national courts by plaintiffs seeking compensation for wartime forced labour. For instance, in April 1999, the Tokyo-based steelmaker NKK entered into a settlement to pay 4.1 million yen to Kim Kyung Suk, a former forced labourer from the Republic of Korea. See "Steelmaker NKK pays 4.1 million yen to wartime laborer", Japan Times, 7 April 1999.

[104] See e.g. statement by Koh Tanaka, Member of the House of Representatives of Japan, to the fifty-fourth session of the United Nations Commission on Human Rights, 6 April 1998.

[105] Republic of the Philippines House of Representatives, 11th Congress, House Resolution No. 378, introduced by the Honourable Romeo D.C. Candazo (30 September 1998).

[106] In November 1998, Italy's highest appeals court upheld the life sentence of Erich Priebke, a former Nazi SS captain involved in a 1944 massacre of 335 civilians in Italy. In April 1999, Britain's Old Bailey Court imposed a life sentence on Anthony Sawoniuk for war crimes committed when he was a member of the Gestapo and the SS in Nazi-occupied Belarus. And Dinko Šakić is on trial in Zagreb County Court for alleged crimes committed while he was the commander of a concentration camp in Croatia.

[107] In addition to Germany and Switzerland, other countries to receive looted "Nazi gold", as it is commonly referred to, include Argentina, Portugal, Spain, Sweden and Turkey. See United States Department of State, US and Allied Wartime and Postwar Relations and Negotiations with Argentina, Portugal, Spain, Sweden, and Turkey on Looted Gold and German External Assets and US Concerns About the Fate of the Wartime Ustasha Treasury (June 1998), available at the United States Department of State Web site (http://www.state.gov/www/regions/eur/). Several major banks in Switzerland and Austria have entered into settlements to compensate Holocaust victims. In 1997, the United States and Great Britain agreed to transfer their Nazi gold holdings to a fund for Holocaust victims and their surviving relatives.

[108] Claims for compensation for wartime forced labour have been made against numerous German companies and banks. For a well-organized list of the accused companies, see "A debt to history? The companies, the allegations, the responses", ABC News, 16 December 1998. Some of the companies have taken steps, in response to pending or potential lawsuits, to compensate victims either through settlements or compensation schemes. See Tony Czuczka, "Slave labor fund set: German firms set up reparation to Nazi-era slave laborers", ABC News, 17 February 1999. Two United States companies, Ford and General Motors, also are accused of using forced labour in their German subsidiaries. See Michael Dobbs, "Ford and GM scrutinized for alleged Nazi collaboration", The Washington Post, 30 November 1998, p. A1. In March 1998, a lawsuit was filed against the Ford Motor Co. in the United States seeking compensation for wartime forced labour. Elsa Iwanowa v. Ford Motor Co. and Ford Werke AG.

[109] See Peter Eisler, "US citizens imprisoned by Nazis to be paid", USA Today, 21 June 1999. The confidential settlement between the United States and Germany was brokered by the United States Department of State which originally had argued for immunity of the Government of Germany in a lawsuit filed in 1994 by a former concentration camp victim. See Hugo Princz v. Federal Republic of Germany, 26 F.3d 1166 (Ct. Apps. D.C. Cir., 1994).

[110] The Commission on Human Rights, in its decision 1999/105, recommended that the Special Rapporteur's final report be transmitted to Governments, to the established international tribunals, to the Preparatory Commission for the Establishment of an ICC, and to other competent bodies of the United Nations.

[111] Final report, para. 102. This recommendation was endorsed by the Sub-Commission on the Promotion and Protection of Human Rights in its resolution 1998/18, paras. 5, 6, 9.

[112] Commission on Human Rights resolution 1991/1 on the situation of human rights in Sierra Leone.

[113] See Sixth report of the Secretary-General on the United Nations Observer Mission in Sierra Leone (S/1999/645) (4 June 1999), para. 34.

[114] Statement by the President of the Security Council (S/PRST/1999/6) (12 February 1999).

[115] Final report, para. 103. This recommendation was endorsed by the Sub-Commission in its resolution 1998/18, para. 7. See also General Assembly resolution 52/86 on crime prevention and criminal justice measures to eliminate violence against women. The General Assembly urged States "to review and evaluate their legislation and legal principles, procedures, policies and practices relating to criminal matters ... to determine if they have a negative impact on women and, if they have such an impact, to modify them in order to ensure that women are treated fairly by the criminal justice system", para. 1.

[116] Illustrating the necessity of adequate protection of victims and witnesses during the investigation of cases involving sexual violence, it is reported that members of the Volunteer Team for Humanity, or Tim Relawan, who were investigating the rapes of ethnic Chinese women in Indonesia, received repeated threats and harassment. One 17-year-old member of Tim Relawan, Martadinata Haryono, was murdered in October 1998. The Indonesian police deny that she was murdered in retaliation for the work she and her mother were doing to investigate the rapes. "Whatever the truth of this matter, the facts that Ms. Haryono and her family were recipients of death threat and anonymous letters casts a cloud over the case." Coomaraswamy, supra note 12, para. 74.

[117] See e.g. UNFPA, Assessment Report on Sexual Violence in Kosovo, supra note 18. The author of the report, a psychology consultant specialized in sexual violence and trauma counselling, discusses the importance of psycho-social counselling not only for victims and witnesses, but also for their families and for those persons who work closely and regularly with victims, such as relief and medical personnel, investigators, and counsellors themselves.

[118] Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995 (United Nations Publication, Sales No. E.96.IV.13) Chap. I, resolution 1, annex II, para. 144 (c). See also Commission on Human Rights resolution 1999/10 on the situations of human rights in Burundi, in which the Commission recognized "the important role of women in the reconciliation process and the search for peace" and urged the Government of Burundi "to ensure the equal participation of women in Burundian society and to improve their living conditions".

[119] See e.g. Report on the situation of human rights in Rwanda submitted by the Special Representative, Mr. Michel Moussalli (E/CN.4/1999/33) (8 February 1999). The report illuminates the dire situation of women in the aftermath of armed conflict in which sexual violence was widespread and largely unpunished.

> "The situation of women is of particular concern, especially in the post-genocide period. Many were sexually abused and grievously injured, or even killed. Of those who survived many contracted AIDS from rape, others lost their husbands and are now single parents with many children, sometimes rejected by their in-laws, having to support these children without any means. Particularly unfair to women is the custom that they traditionally do not have the right to inherit their husbands' property. Instead, they can only act as guardians for their children while the latter are still minors. Even those who had managed to flee into exile with their husbands cannot live at home when they return to Rwanda, and are effectively deprived of the necessities of life" para. 56.

See also Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, on the mission to Rwanda on the issue of violence against women in situations of armed conflict, (E/CN.4/1998/54/Add.1) (4 February 1998), sect. IV (on the situation of women victims of the Rwandan conflict).